

**BEFORE THE APPEALS BOARD
FOR THE
KANSAS DIVISION OF WORKERS COMPENSATION**

DAVID A. POTTS

Claimant

VS.

METAL-FAB, INC.

Self-Insured Respondent

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Docket No. 1,018,960

ORDER

Respondent appealed the October 12, 2004 preliminary hearing Order entered by Administrative Law Judge John D. Clark.

ISSUES

Claimant alleges he injured his left knee on August 12, 2004, when he allegedly slipped in grease at work, and through his last day of working for respondent on August 18, 2004. In the October 12, 2004 Order, Judge Clark granted claimant's request for workers compensation benefits.

Respondent contends Judge Clark erred. Respondent argues claimant failed to prove he injured his left knee at work and failed to prove he provided respondent with timely notice of the accident or injury. Moreover, respondent charges claimant actually injured his knee playing hockey. Accordingly, respondent requests the Board to reverse the preliminary hearing Order and to deny claimant's request for benefits.

Conversely, claimant requests the Board to affirm the Order.

The issues before the Board on this appeal are:

1. Did claimant injure his left knee in an accident that arose out of and in the course of his employment with respondent?
2. If so, did claimant provide respondent with timely notice of that accidental injury?

FINDINGS OF FACT AND CONCLUSIONS OF LAW

After reviewing the record compiled to date and considering the parties' arguments, the Board finds and concludes the preliminary hearing Order should be affirmed.

Claimant testified he slipped in grease and twisted his left knee on August 12, 2004, while working for respondent. Claimant also testified he reported the incident to his supervisor, Gerry Lowe, and requested medical attention. According to claimant, he was not sent to a doctor. Instead, he continued working for respondent and his symptoms worsened.

On August 18, 2004, claimant went to the Wesley Medical Center emergency room. Claimant testified he told his supervisor he was going to see a doctor and again related his knee symptoms to the August 12, 2004 incident at work. At the emergency room, claimant provided a history of slipping on grease at work and twisting his left knee. The emergency room records read, in pertinent part:

Pt states he has been having pain in L knee since last Thursday.

Pt states he slipped on some grease @ work and twisted L knee. Pt states knee "pops" every time he stands up.¹

Claimant's supervisor testified at the preliminary hearing. Mr. Lowe does not recall claimant reporting a work-related accident on August 12, 2004. But Mr. Lowe's notes do indicate he spoke with claimant following the emergency room visit on August 20, 23, and 24, 2004. In the first telephone call, claimant said he had water on his knee. In the second call, claimant said the doctor would not release him to return to work. And in the third call, claimant stated he was going to another doctor. According to Mr. Lowe, claimant never related his knee problems to work and Mr. Lowe never asked claimant how he had hurt his knee. Consequently, Mr. Lowe did not initiate the company's procedure for handling injuries at work.

Respondent's human resources manager, Donna Kay McKee, also testified at the preliminary hearing. Ms. McKee explained how she had not received any reports from claimant about a work-related accident and, therefore, she did not initiate the company's procedure for addressing work-related accidents.

After considering the witnesses' testimonies and the parties' numerous exhibits, Judge Clark determined claimant injured his knee at work and that claimant had provided

¹ P.H. Trans., Cl. Ex. 1 at 2.

respondent with timely notice of the accident despite respondent's evidence to the contrary. In this instance, the Board gives some deference to the Judge's implied finding that claimant was a credible witness.

For preliminary hearing purposes, the Board concludes it is more probably true than not that claimant injured his left knee on August 12, 2004, when he slipped in grease at work, and that he provided respondent with timely notice of that accident.

As provided by the Workers Compensation Act, preliminary hearing findings are not binding or final but, instead, are subject to modification in a full hearing on the claim and upon a full presentation of the facts.²

WHEREFORE, the Board affirms the October 12, 2004 Order entered by Judge John D. Clark.

IT IS SO ORDERED.

Dated this ____ day of March 2005.

BOARD MEMBER

c: Chris A. Clements, Attorney for Claimant
Kathleen N. Wohlgemuth, Attorney for Respondent
John D. Clark, Administrative Law Judge
Paula S. Greathouse, Workers Compensation Director

² K.S.A. 44-534a.